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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4418 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

BABUBHAI SOMABHAI VAGHRI

Versus

STATE OF GUJARAT & ANR.

Appearance:

Shri Jitendra M. Patel, Advocate, for the
Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 03/04/96

ORAL JUDGEMENT

The order passed by the Collector of Panchmahals
at Godhra (respondent No. 2 herein) on 18th November
1983 as affirmed in revision by the order passed by and

on behalf of the State Government (respondent No. 1 herein) on 21st May 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 2 cancelled the permission granted in favour of the petitioner for conversion of one parcel of land bearing survey No. 102(part) admeasuring 4600 square meters situated in Lunavada (the disputed land for convenience) from new tenure to old tenure by the order passed on 31st May 1982.

2. The facts giving rise to this petition move in a narrow compass. The petitioner became the deemed purchaser of the disputed land under what is popularly known as the Tenancy Act. It was a new tenure land in his hands. It appears that he wanted to sell the land after obtaining what is popularly known as the N.A. permission. He therefore appears to have applied for conversion of the disputed land from new tenure to old tenure. By the order passed by and on behalf of respondent No.2 on 31st May 1982, such permission was granted on certain terms and conditions. Its copy is at Annexure B to this petition. It appears that the petitioner thereafter applied for the N.A. permission on 7th October 1982 with respect to the disputed land. By the order passed by the District Development Officer of Panchmahals at Godhra on 25th January 1983, such N.A. permission came to be granted in favour of the petitioner. Its copy is at Annexure C to this petition. It appears that the petitioner thereafter sold the disputed land in two different parts to two different purchasers some time in June and July 1983. Copies of the sale deeds are at Annexures E and F to this petition. It appears that respondent No. 2 came to know that certain conditions contained in the order at Annexure B to this petition were not complied with. He thereupon issued a show-cause notice on 11th October 1983 calling upon the petitioner to show cause why the permission granted by the order at Annexure B to this petition should not be cancelled. After hearing the petitioner, by his order passed on 11th November 1983, respondent No. 2 cancelled the permission granted by the order at Annexure B to this petition. A copy of the order passed on 18th March 1983 is at Annexure G to this petition. The aggrieved petitioner carried the matter in revision under sec. 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) before respondent No. 1. By the order passed by and on behalf of respondent No. 1 on 21st May 1984, the petitioner's revisional application came to be rejected. Its copy is at Annexure H to this petition. The aggrieved petitioner has thereupon

approached this Court by means of this petition under art. 227 of the Constitution of the India for questioning the correctness of the order at Annexure G to this petition as affirmed in revision by the order at Annexure H to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary contention regarding maintainability of this petition on the ground that the impugned orders are not amenable to art. 227 of the Constitution of India. At this stage learned Advocate Shri Patel for the petitioner orally applies for conversion of this petition also under art. 226 of the Constitution of India. The oral request made by learned Advocate Shri Patel for the petitioner is granted and this petition will be treated as also under art. 226 of the Constitution of India on payment of the deficit court-fees, if any.

4. The order at Annexure B to this petition contained one condition that the sale transaction was to be effected within 6 months from its date and that the purchaser had to apply for the N.A. permission within 6 months from the date of purchase. It may be noted that the petitioner himself applied for the N.A. permission on 7th October 1982 within 6 months from the date of the order at Annexure B to this petition. It is possible that the purchasers wanted to purchase only after the N.A. permission was obtained. In that view of the matter, the petitioner can be said to have complied with the conditions imposed while granting the permission by the order at Annexure B to this petition.

5. Even otherwise, the petitioner can be said to be guilty of only technical breach and not its substantive breach. The conditions attached to the order at Annexure B to this petition required the purchaser to apply within 6 months from the date of the sale transaction for the N.A. permission. Such condition can be said to be only directory for the simple reason that, in case the land-holder himself should like to use the land for himself without selling it, he should not be obliged to sell it simply because such condition has been imposed. In that view of the matter, application for the N.A. permission made by the petitioner within 6 months from the date of the order at Annexure B to this petition would amount to substantial compliance with the aforesaid conditions.

6. In view of my aforesaid discussion, I am of the view that the petitioner can be said to have

substantially complied with the conditions imposed while granting the permission by the order at Annexure B to this petition. In that view of the matter, the impugned orders at Annexures G and H to this petition cannot be sustained in law. They deserve to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Collector of Panchmahals at Godhra on 18th November 1983 at Annexure G to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 21st May 1984 at Annexure H to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
